

**County of San Luis Obispo  
Food and Beverage Vendor for Avila Beach Plaza**

**May 5, 2013**

**AVILA BEACH FRONT STREET PLAZA  
Vendor Contract**

This Vendor Contract (hereinafter "Contract" or "Permit") is entered into by and between the County of San Luis Obispo, a public entity in the State of California, hereinafter referred to as "County," and California Hot Dog Company, hereinafter referred to as "Concessionaire."

County and Concessionaire hereby mutually covenant and agree as follows:

1. **Premises:** County hereby authorizes Concessionaire, subject to the conditions and limitations hereinafter set forth, to exclusively use approximately 50 square feet of County owned real property commonly referred to as the Avila Beach Front Street Plaza, hereinafter referred to as "Premises" and shown on Exhibit "A".
2. **Term:** Unless terminated sooner as provided herein, the term of this Permit shall be for a period of two (2) years, commencing on April 1, 2015 ("Initial Term") and terminating at 11:59 p.m. on April 31, 2017 with one two year option for an extension if agreed upon by both parties.
3. **Use of Premises:**
  - A. Concessionaire shall use the Premises for the sole purpose of operating a mobile food and beverage vending cart service, to serve the general public on County-owned property which is held for park purposes. Said use shall be consistent with the Avila Beach Specific Plan adopted by the San Luis Obispo County Board of Supervisors on October 17, 2000.
  - B. Concessionaire shall not prepare or sell food and beverages from outside the confines of the Concessionaire's mobile cart/unit.

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C. Concessionaire shall not sell or distribute any alcoholic beverages at the Premises.

D. Concessionaire shall not store equipment, food or beverages on the ground or any surface at the Premises other than on or in the mobile cart/unit. Concessionaire shall not use, set up, attach, place or permit the use of any table, crate, rack device, processing and/or cooking grills or structure of any kind outside or apart from the mobile cart/unit.

E. No permanent or semi-permanent structures, mobile or fixed carts, kiosks, booths or similar configurations are permitted on the Premises without the prior written approval by the Parks Director or his/her designee, collectively ("Director").

F. Concessionaire shall oversee the Premises and all of its improvements. Concessionaire shall be responsible for ensuring the Premises and the vending cart are well cared for, clean and an enhancement to the community as a whole.

G. Concessionaire agrees that the County shall not be responsible to Concessionaire for any loss of property at the Premises, however occurring.

H. Concessionaire agrees that the Premises are located in and adjacent to a multi-use public area at the Avila Beach Front Street Plaza. Concessionaire shall operate and conduct its business in a good, efficient and economical manner so as to be conducive to providing service to the public on a fair, equal and not unjustly discriminatory basis and in a manner conducive to the obtaining and retaining of the general good will of the community and of the public.

I. Concessionaire shall not use the Premises during the term of this Permit for any purpose other than as set forth in this Section 3, without prior written consent of the Director. Concessionaire expressly agrees to maintain Premises in condition similar to the quality and service level of similar businesses in like locations.

J. Concessionaire shall at all times faithfully obey and comply with all present and future laws, rules and regulations of federal, state, County or other governmental bodies or department of officers thereof, including but not limited, any relevant County of San Luis Obispo Health Agency licensing or permit requirements, rules or regulations. Concessionaire's use of said Premises is subject to all statutes, ordinances



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and regulations, including, without limitation, those relating to mobile food facilities, land use and zoning now or hereafter applicable to the Premises, and to all covenants, easements, reservations and restrictions of record applicable to the Premises.

Concessionaire shall display all required licenses, permits, and certificates on the Food & Beverage Cart, in a conspicuous place that is clearly visible to the public.

K. Concessionaire shall be solely responsible for providing of all services, equipment, supplies, and personnel for the administration, staffing, operation and maintenance of the Concessionaire's business at the Premises as described in this Permit and within minimum operating requirements as stated in Exhibit B. Concessionaire shall provide food and beverages as described in Exhibit "C" at prices indicated in Exhibit "C". Concessionaire may only make changes to Concessionaire's food and beverage menu and pricing with the prior written approval of the Parks Director or his/her designee..

L. Concessionaire is responsible for obtaining and keeping current all local, state and federal licenses and permits that may be required in its operation under this Concessionaire to comply with applicable federal, state or local regulations.

4. **Permit Fee:** Concessionaire shall pay the County the sum of \$8,000.00 per year of this Permit, paid in equal quarterly installments in advance of each quarter starting April 1, 2015 to the Parks finance officer located at 1087 Santa Rosa Street San Luis Obispo, CA 94308. Payments shall be on or before the following dates and in the following amounts:

Year One

May 6, 2015 partial payment installment due

June 1, 2015 2<sup>nd</sup> payment installment due

September 1, 2015 3<sup>rd</sup> payment installment due

December 1, 2015 4<sup>th</sup> payment installment due

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Year Two

March 1, 2016 1<sup>st</sup> payment installment due

June 1, 2016 2<sup>nd</sup> payment installment due

September 1, 2016 3<sup>rd</sup> payment installment due

December 1, 2016 4<sup>th</sup> payment installment due

March 1, 2017 final payment due (pro rated)

No portion or portions of fees shall be refunded for any unused portion of the Term, whether this Concessionaire is terminated by Concessionaire, the County or any other entity prior to completion of the Term.

5. **Improvements to Premises:** Concessionaire accepts the Premises in an "as is" condition. At the expiration or earlier termination of this Permit, all alterations, modifications, or improvements upon the Premises whether made by the County or by the Concessionaire absent any agreement between the County and the Concessionaire to the contrary at the time of installation, or unless County otherwise elects, which election shall be made by giving a notice in writing not less than fifteen (15) days prior to the expiration or other termination of this Permit, shall remain upon and be surrendered with the Premises as a part thereof at the end of the term of this Permit. In the event County shall notify Concessionaire to remove any and all of the alterations, additions, or improvements made by the Concessionaire, Concessionaire shall promptly, at Concessionaire's sole cost and expense, remove items and repair any damage caused by such removal.

6. **Inspections:** County, its officers, agents and employees, shall have the right to examine the Premises at any time (at least on a quarterly basis), determine what repairs are needed and to direct Concessionaire to make such repairs, resulting from Concessionaire's use of the Premises, as may be necessary at the sole cost and expense of Concessionaire. Quarterly inspections will be performed in the presence of Concessionaire representative, with the results provided in writing to the Concessionaire. In the event Concessionaire fails to make repairs discovered in the inspection, the County



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may make said repairs and charge Concessionaire for the cost of said repairs and Concessionaire agrees to pay any and all such costs upon demand. County, its officers, agents and employees, shall have access to and the right to enter upon the Premises at any time to examine condition thereof, to make any repairs required to be made by County hereunder, and for any other purpose deemed reasonable by County.

7. **Repairs Maintenance and Alterations:** Concessionaire, at Concessionaire's sole cost and expense, shall maintain and keep the Premises and all improvements placed thereon in a clean, safe, sanitary condition, and good state of repair during the term of this Permit and shall not, at any time, commit or suffer to be committed any waste, nuisance, or unlawful act thereon resulting from their use of the Premises. Maintenance will include regular litter pickup, trash disposal, and any routine maintenance activities associated with regular use of the Premises. Concessionaire shall keep its mobile cart/unit free of litter and trash caused or generated by the operation of the services under this Permit. Concessionaire shall haul out their own trash and debris. Should the Concessionaire fail or neglect to make repairs, as necessary to protect the health, safety, or welfare of individuals using the Premises, County may, after ten (10) working day's written notice to Concessionaire, make said repairs and charge Concessionaire for same, and Concessionaire shall pay County costs for repairs on demand.

Concessionaire hereby agrees to be solely responsible for the total care and maintenance of fixtures and equipment installed by Concessionaire or its predecessors servicing the Premises, irrigation, water features, lighting, trees and planters including all costs in connection therewith.

8. **Utilities:** Concessionaire shall not use any water or utilities drawn from outlets, lines or conduits serving or located in or near the Premises unless the County, in its sole discretion, makes arrangements with the Concessionaire for electrical, plumbing or other utility supply to the Concessionaire. The County agrees to provide Concessionaire with and pay for reasonable electricity costs.

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**9. Insurance:**

Concessionaire shall procure and maintain for the duration of the Permit insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Concessionaire, his agents, representatives, employee's, or subcontractors as set forth in Exhibit D to this Permit.

**10. Indemnification:** Concessionaire shall defend, indemnify and hold harmless the County, its officers and employees from all claims, demands, liability, loss, injury, damages, costs, expenses, judgments, attorney and expert witness fees, or other losses that may be asserted by any person or entity, including Concessionaire, and that arise out of or are made in connection with the negligent or wrongful acts or omissions relating to Concessionaire's performance of any obligation or duty provided for or relating (directly or indirectly) to this Permit, whether or not such claim is caused in whole or in part by the active or passive negligence of County, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to provide the County the fullest indemnification, defense, and hold harmless rights allowed under the law. If any word(s) contained herein are deemed by a court to be in contravention of applicable law, said word(s) shall be severed from this Permit and the remaining language shall be given full force and effect.

**11. Waiver:** Concessionaire hereby waives any and all claims for damages that may be caused by County in re-entering and taking possession of the Premises, and all claims for damages that may result from the destruction of or injury to the Premises thereby, and all claims for damages to or loss of such property belonging to Concessionaire as may be in or upon the Premises at the time of such re-entering. Concessionaire hereby also waives any and all claims against County for loss or damages to any property of Concessionaire from any cause arising at any time.



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12. **Assignment:** This Permit shall not be used by any other person, other than Concessionaire. This Permit is of a personal nature and Concessionaire shall not assign, sublet, mortgage, pledge or otherwise transfer this Permit, either voluntarily or by operation of law, in whole or in part.

13. **Rules:** The County reserves the right at any time to make such reasonable rules and regulations as in its judgment may from time to time be necessary for the safety, care, and cleanliness of the Premises, and for the preservation of good order therein, and Concessionaire hereby agrees to strictly comply therewith.

14. **Venue and Choice of Laws:** This Permit has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Permit shall be determined and governed by the laws of the State of California and in a court of competent jurisdiction located in San Luis Obispo County.

15. **Repair and Surrender:** Concessionaire hereby accepts the Premises in good condition and agrees to surrender possession of and restore the Premises unto County in the same and as good condition as received upon termination of this Permit. Concessionaire further agrees to promptly repair any and all damage caused by Concessionaire in the use of the Premises.

16. **Termination of Permit for Convenience of Either Party.** Either party may terminate this Permit at any time by giving to the other party 60 days written notice of such termination. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination.

17. **Breach:** In the event the County determines Concessionaire to be in default or breach of this Permit and Concessionaire shall continue in such default or breach for ten days (10) after County gives notice to Concessionaire of said breach; or should any attachment, garnishment or execution be levied against the Concessionaire or County's

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property and not be removed within ten (10) days after written notice from County; or if Concessionaire shall cease its operations under this Permit for causes other than destruction of the Premises, on giving ten (10) days notice of intention to do so, and upon expiration of said notice, County, or its agents or employees, shall be entitled to the immediate possession of the Premises. The exercise of the remedies provided for in this section shall be cumulative and in no way affect or replace other remedies available to County.

19. **Independent Contractor Status:** Concessionaire enters into this Permit solely and exclusively as an independent contractor and only in that capacity and not as a partner or employee of the County.

19. **Provisions Deemed Covenants and Conditions:** The parties hereto agree that all of the provisions hereof are to be construed as covenants and conditions as though the words importing such covenants and conditions were used in each instance, and that all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

20. **Notices:** All notices herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States Mail, postage prepaid and addressed as follows:

To Permittee at: California Hot Dog Company  
402 Dan Ct.  
Santa Maria, CA 93454  
805-260-0429  
bpduran14@gmail.com

Contact Person: Bobby Duran  
Dianna Duran



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To County at: County of San Luis Obispo Department of Parks  
1087 Santa Rosa Street  
San Luis Obispo, CA 93408  
Attention: Parks Superintendent

Contact Person: Larry laquinto,  
Parks Superintendent - Parks (805) 781-5209

21. **Severability:** The invalidity of any provision of this Permit shall not affect the validity, enforceability of any other provision of this Permit.
22. **Business Interruption:** Concessionaire shall have no claim to County for damages or lost income if, for any reason, Concessionaire experiences an interruption in business operations however occurring at the Premises.
23. **Power and Authority of Permittee:** If Concessionaire is a corporation or a limited liability company, Concessionaire represents and warrants that the person(s) signing this Permit have full authority and authorization to bind Concessionaire to the terms, covenants, and conditions contained herein.
24. **Entire Agreement and Modifications:** This Permit supersedes all previous Permits, Contracts and/or Agreements between the parties regarding the services to be performed under this Permit and constitutes the entire understanding of the County and Concessionaire. Concessionaire shall be entitled to no other benefits than those specified herein. No changes, amendments, or modifications to this Permit shall be effective unless in writing and signed, in advance of the effective date of the change, amendment or modification, by both parties. Concessionaire specifically acknowledges that in entering into this Permit, Concessionaire relies solely upon the provisions contained in the Permit and no other agreement whether written or oral prior to entering this Permit.

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IN WITNESS WHEREOF, County and Concessionaire agree to all of the terms and conditions hereinabove set forth.

/////////////////NOTHING FURTHER EXCEPT SIGNATURES////////////////

COUNTY OF SAN LUIS OBISPO

By: \_\_\_\_\_  
Chairperson of the Board of Supervisors

Approved by the Board of Supervisors this

day of , 2015.

ATTEST:

\_\_\_\_\_  
Clerk of the Board of Supervisors

PERMITTEE:

By Rogelio Dianna Duran

Name and Title



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Date: 4/15/15

APPROVED AS TO FORM AND  
LEGAL EFFECT:

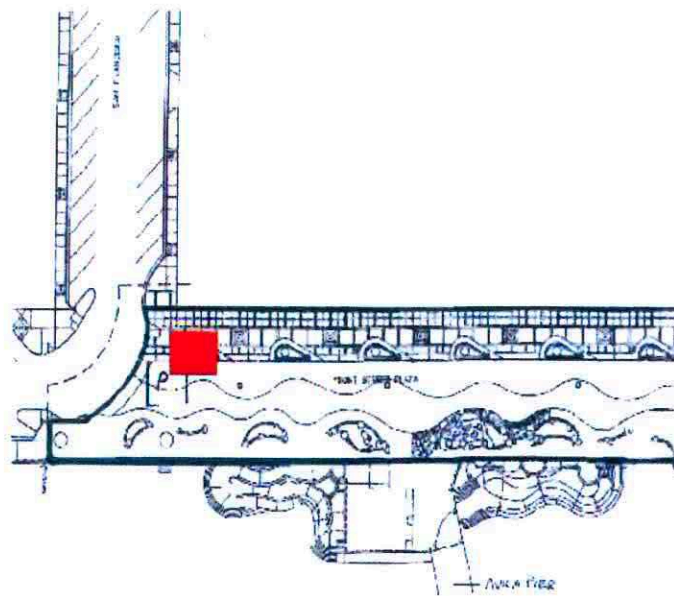
RITA L. NEAL  
County Counsel

By: Shannon Matiguer  
Deputy County Counsel

DATE: 4/16/15

**EXHIBIT "A" FOR AVILA PLAZA**

Red block indicates Premises Location



**EXHIBIT A**



## EXHIBIT "B"

The vending cart shall be well stocked and operated at the time and during the days of the week as set forth below. The below hours of operation are mutually agreed upon by Concessionaire and County to best serve the public and represent Concessionaire's minimum service requirements. If Concessionaire desires to adjust the hours or days of operation such that they are below these minimum requirements, Concessionaire shall secure the prior written permission of County. Concessionaire may elect to provide hours of operation above and beyond those defined below upon written notification to, and approval by, the County.

### Summer Season

The summer season is defined for the purpose of this Permit as commencing annually on the first day of Memorial Day and ending on the last day of Labor Day weekend.

Concessionaire shall operate its business six (6) days per week, including all Saturdays, Sundays and holidays, from noon to 5:00 p.m., weather permitting.

Concessionaire is entitled to two (2) consecutive or non-consecutive "no-show" days, excepting Saturdays, Sundays and holidays during the summer season without being considered in breach of this Permit, provided Concessionaire notifies the County, in writing, two weeks in advance.

### Fall Season

The fall season is defined for the purpose of this Permit as commencing annually on the day after Labor Day weekend and ending the following October 31. Concessionaire shall operate its business on all Saturdays, Sundays and holidays, between the hours of noon to 5:00 p.m., weather permitting, during the fall season.

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Winter Season

The winter season is defined for the purpose of this Permit as commencing annually on November 1 and ending the following March 31. There are no minimum days or hours of operation requirements during the winter season.

Spring Season

The spring season is defined for the purpose of this Permit as commencing annually on April 1 and ending at the close of business on the Friday immediately prior to Memorial Day weekend. Concessionaire shall operate its business on all Saturdays, Sundays and holidays, between the hours of noon to 5:00 p.m., weather permitting.



EXHIBIT "C"

This exhibit is a listing of products to be sold with pricing.

Hot Dogs \$ 3.00  
Jumbo Dogs \$ 5.00  
Hebrew All Beef Dog \$ 5.00  
Cajun Sausage \$ 5.00  
Polish Sausage \$ 5.00  
Nachos \$ 3.50  
Fresh Fruit Cup \$ 6.00  
Churros \$ 1.50  
Chips \$ 1.00  
Candy Licorice 12 for \$1.00  
Cotton Candy \$ 2.00 Small \$ 4.00 Large  
Water \$ 1.50  
Soda \$ 1.50  
Hawaiian Shaved Ice \$ 3.00 Small \$ 4.00 Medium \$ 5.00 Large  
Cherry Strawberry Black Cherry Lime Green Apple Blue Raspberry Pineapple Pina-  
Colada Bubble Gum Watermelon Cotton Candy Root Beer Vanilla Coconut  
Grape Lemon Cola Tigers Blood Banana Orange Peach

All hot dogs and sausages are fully cooked when delivered from the sausage company.  
Hot dogs consist of a minimum of 90% beef (10% pork). Hebrew dogs are 100% beef.  
All hot dogs and sausages are steamed prior to offering to customers.

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**Exhibit D Insurance Requirements**

**Insurance:**

Concessionaire shall obtain and maintain for the entire term of the Contract and Concessionaire shall not perform any work under this Contract until after he has obtained insurance complying with the provisions of this paragraph. Said policies shall be issued by companies authorized to do business in the State of California. Concessionaire shall maintain said insurance in force at all times. The following coverage with the following features shall be provided:

**A. Commercial Liability Insurance:** Concessionaire shall maintain in full force and effect for the period covered by this Contract, commercial liability insurance. This insurance shall include, but shall not be limited to, comprehensive general and automobile liability insurance providing protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from any act or occurrence arising out of Concessionaire's operations in the performance of this Contract, including, without limitation, acts involving vehicles. The policy shall be in the form of Insurance Services Office (ISO) Form CG 00 01 covering commercial general liability on an "occurrence" basis for bodily injury and property damage, personal injury and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this location or the general aggregate limit shall be twice the required occurrence limit. The following endorsements must be attached to the policy:

- (1) If the insurance policy covers on an "accident" basis, it must be changed to "occurrence".
- (2) The policy must cover personal injury as well as bodily injury.
- (3) Blanket contractual liability must be afforded and the policy must contain a cross liability or severability of interest endorsement.

**B. Workers' Compensation Insurance:** In accordance with the provisions of sections 3700 et seq., of the California Labor Code, if Concessionaire has any employees, Concessionaire is required to be insured against liability for workers' compensation or to undertake self-insurance. Concessionaire agrees to comply with such provisions before commencing the performance of this Contract.

**C. Additional Insureds to be Covered:** The commercial general liability policies shall name "County of San Luis Obispo, its officers and employees" as additional insureds. The policy shall provide that the Concessionaire's insurance will operate as primary insurance and that no other insurance maintained by the County, or additional insureds will be called upon to contribute to a loss hereunder.

**D. Certification of Coverage:** Prior to commencing work under this contract, Concessionaire shall furnish County with the following for each insurance policy required to be maintained by this Contract:

- (1) A copy of the Certificate of Insurance shall be provided. The certificate of insurance must include a certification that the policy will not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the County.
- (2) A Workers' Compensation certificate of insurance must be provided.
- (3) Upon written request by the County, the Concessionaire shall provide



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a copy of the complete insurance policy.

(4) Approval of Insurance by County shall not relieve or decrease the extent to which the Concessionaire may be held responsible for payment of damages resulting from Concessionaire's services or operations pursuant to this Contract. Further, County's act of acceptance of an insurance policy does not waive or relieve Concessionaire's obligations to provide the insurance coverage required by the specific written provisions of this Contract.

E. **Effect of Failure or Refusal:** If Concessionaire fails or refuses to procure or maintain the insurance required by this contract, or fails or refuses to furnish County with the certifications required by *Subparagraph D.* above, County shall have the right, at its option, to forthwith terminate the Contract for cause.